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IN THE

Supreme Court of the United States

October Term, [redacted] 1970

No. [redacted] 181

PETER J. LADZINSKI,

Petitioner,

against

SPERLING STEAMSHIP & TRADING CORP.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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On the Brief

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No. 1607

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I

Argument

At the outset it must be noted that the District Court and the Court of Appeals decided this case upon undisputed facts in finding that the Petitioner's claim for transportation under the General Maritime Law and under Section 29 (1) (a) of the Union Agreement providing for transportation, wages and maintenance during travel were not "wages" and would not give rise to a claim for double wages within the meaning of 46 U.S.C. 596 (1964).

Respondent, owner of the "SS East Hills" employed Petitioner at Chester, Pennsylvania to serve as third assistant engineer. Petitioner signed off-articles at San Francisco for medical reasons and was paid all earned wages.

Upon demand for return transportation to Chester, the Master referred the Petitioner to Respondent's New York office. Petitioner elected to travel at his expense from San Francisco to Baltimore, Maryland via bus.

After arrival at Baltimore, stipulated by the parties to be the original port of engagement in lieu of Chester, the Petitioner requested the Respondent to pay him first class rail transportation lower berth, three days' wages and subsistence of three days at $6.00 per day, a total of $322.33. The request was made under Section 29 (1) (a) entitled "Transportation", of the agreement entered into between Respondent and the Seaman's Union, the National Marine Engineers' Beneficial Association District No. 1.[1] Upon the failure of the Respondent to pay $322.33,[2] the Petitioner demanded a penalty of two days' wages for each day's transportation withheld.

1. Section 29 entitled "Transportation" is set forth in the opinion of the District Court at pages 5 (a) and (b) of the Appendix to Respondent's Brief. The Appendix is referred to hereinafter as "A". The other pertinent facts of the Agreement are Section 7, captioned WAGES, Section 4 (a) (d) dealing with discharge, 4 (c) dealing with pay-off procedure upon discharge and Section (1) providing for replacement engineers. The material parts of Section (7), (1) and (4) are set forth in the District Court's Opinion (A, 11a). Section 35 of the Agreement provides for maintenance and cure (A, 19a).

2. The District Court held Respondent liable for $322.33. At the trial Respondent tendered judgment and Petitioner accepted judgment to satisfy Petitioner's claim of $1,257.00 for unearned wages and $392.00 for maintenance and cure (A, 4a).

An important practical fact is that transportation is clearly not an item which is likely to be paid or furnished immediately upon the seaman's discharge, or within four days after his discharge, or indeed at any fixed time. Transportation is usually furnished by the shipowner and no cash is actually transferred. Sometime may elapse after discharge before the owner can provide adequate transportation (A, 20a).

The District Court considered and disposed of all the explicit and implicit arguments advanced by the Petitioner. The contentions urged by the Petitioner in his Petition are no different from the contentions advanced by him below. The Petitioner has not questioned the District Court's finding of fact nor has he shown that the District Court and the Court of Appeals did not correctly apply the law to the facts.

The Petitioner urged below that under Section 29(T) (a) of the Union Agreement and implicitly under the General Maritime Law, transportation and wages and maintenance during transportation were "wages" within the meaning of 46 U.S.C. 596. The District Court found that under Section 7 of the Union Agreement, in contrast to Section 29 (1) (a), wages were dealt with separately from transportation and were limited to services rendered (A, 11a).

The Court next considered the practical aspects of transportation and found as a fact, under case law, that transportation was clearly not an item which is likely to be paid or furnished immediately upon the seaman's dis-

charge or within four days after his discharge as provided with respect to wages under 46 U.S.C. 596 (A, 21a).

Lastly the Court considered the subject of transportation in the Seaman's Act 46 U.S.C. 541, et seq., and concluded that it was the intent of Congress, as evidenced by Congressional Hearings and case law, that wages within the meaning of 46 U.S.C., Section 596 was a subject which was dealt with separately and distinctly from transportation (A, 21a, 14a-16a).

The District Court stated that:

> "To recapitulate, the Court's conclusion is reached through an analysis of the history of the item of 'transportation' in the general maritime law, a consideration of the practical manner in which transportation is furnished, and an inquiry into the treatment of the subject of transportation in the Seaman's Act, 46 U.S.C. et seq.
>
> In the interest of complete discussion, the Court notes that extensive research has uncovered no case in which a seaman requested penalties and §596 for the wrongful withholding of 'transportation'."

The District Court stated in footnote 28 (A, 24a) with reference to this Court's decision in *Johnson* v. *Isbrandtsen*, 343 U.S. 779 (1951):

> "This case supports this Court's conclusion and is the closest any case has come to an actual holding that transportation is not wages within the meaning of Section 596."

II

Reasons for Denial of the Writ

1. The Decision Below Is Not in Conflict With That of This Court in *Johnson* v. *Isbrandtsen Co.*, 343 U.S. 779 (1951) or With the Court of Appeals for the Second Circuit in *Nelson* v. *McCormack Lines, Inc.*, 297 F.2d 936 (2 CA 1962), cert. den. 369 U.S. 873.

This Court did not hold in the *Johnson* case that "transportation" is "wages". Quite the contrary, the District Court's analysis of that case is correct and is the closest any case has come to an actual holding that transportation is not wages within the meaning of Section 596.

In *Nelson*, 201 F. Supp. 40, the District Court pointed out at page 43 that Libellant's claim for wage penalties was based on earned wages to the termination of the voyage. The claim was denied. The other facet of the *Nelson* case dealt with wrongful discharge. The Union Agreement there provided for return transportation including wages and subsistence incident thereto to the final port of discharge on the west coast of the United States. Plaintiff was discharged at New York. In an action for breach of contract the District Court allowed plaintiff his transportation to the west coast together with wages and board incident to that journey. That was exactly what the shipowner offered plaintiff under the Union Agreement from the very beginning.

The Second Circuit affirmed and noted that the District Court dealt with penalties on one hand for the alleged failure to pay accrued wages and on the other hand damages for breach of contract. Neither Court held that transportation

is wages. The District Court in the instant case cited *Nelson* (A, 18a) as a case where transportation was stipulated in the Union Agreement and pointed out that a seaman may rely on his contract for recovery.

2. The Question Presented Is Not of Sufficient Importance to Require Adjudication by This Court.

The District Court found, and the Circuit Court affirmed, that transportation is not wages within the meaning of Section 596. The District Court's conclusion was reached, as pointed out, through an analysis of the history of the item of transportation in the General Maritime Law, a consideration of the practical matter in which transportation is furnished, and an inquiry into the treatment of the subject of transportation in the Seaman's Act, 46 U.S.C. 541 et seq. Unless this Court is willing to disregard the findings of the District Court and the affirmance by the Circuit Court there is nothing of importance for this Court to decide. It is respectfully submitted that such a displacement of the findings of the Courts below would be abhorrent to how the item of transportation is treated in the General Maritime Law, the practical application of that item by the industry and the intent of Congress in enacting the Seaman's Act, 46 U.S.C. 541 et seq.

CONCLUSION

The judgment below should be sustained in all respects.

Respectfully submitted,

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